"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी.2-22-छत्तीसगढ़ गजट / 38 सि. से. भिलाई, दिनांक 30-05-2001."

पंजीयन क्रमांक
"छत्तीसगढ़/दुर्ग/09/2013-2015."

छत्तीसगढ़ राजपत्र

(असाधारण)
प्राधिकार से प्रकाशित

क्रमांक 217] रायपुर, सोमवार, दिनांक 18 जून 2018 — ज्येष्ठ 28, शक 1940

विधि और विधायी कार्य विभाग
मंत्रालय, महानदी भवन, नया रायपुर

नया रायपुर, दिनांक 18 जून 2018

क्रमांक 6135/डी. 103/21-अ/प्रा./छ. ग./18.— भारत सरकार, विधि और न्याय मंत्रालय, विधायी विभाग के पत्र क्रमांक 2(2)/18-Leg. I/ नई दिल्ली, दिनांक 06-06-2018 के अनुसरण में दि इन्सॉल्वेन्सि एंड बैंक्रप्ट्सी कोड (अमेंडमेन्ट) ऑर्डिनेन्स, 2018 (क्रमांक 6 सन् 2018) एतद्द्वारा सर्वसाधारण की जानकारी हेतु पुन: प्रकाशित की जाती है.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
मनीष कुमार ठाकुर, अतिरिक्त सचिव.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 6th June, 2018/Jyaistha 16, 1940 (Saka)

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2018
No. 6 OF 2018

Promulgated by the President in the Sixty-ninth Year of the Republic of India.

An Ordinance further to amend the Insolvency and Bankruptcy Code, 2016.

WHEREAS the Insolvency and Bankruptcy Code, 2016 (the Code), inter alia, provides for insolvency resolution of corporate persons in a time bound manner for maximisation of value of assets of such persons;

AND WHEREAS a need has been felt, inter alia, to balance the interests of various stakeholders in the Code, especially interests of home buyers and micro, small and medium enterprises, promoting resolution over liquidation of corporate debtor by lowering the voting threshold of committee of creditors and streamlining provisions relating to eligibility of resolution applicants;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :-

Short title and commencement.

1. (*1*) This Ordinance may be called the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

(*2*) It shall come into force at once.

Amendment of section 3.

2. In the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), in section 3, in clause (*12*), for the word "repaid", the word "paid" shall be substituted.

31 of 2016.

Amendment of section 5.

3. In section 5 of the principal Act,—

(*i*) after clause (*5*), the following clause shall be inserted, namely:—

'(*5A*) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;';

(*ii*) in clause (*8*), in sub-clause (*f*), the following *Explanation* shall be inserted, namely:—

'*Explanation*.— For the purposes of this sub-clause,—

(*i*) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(*ii*) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (*d*) and (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016;';

16 of 2016.

(*iii*) in clause (*21*), for the word "repayment", the word "payment" shall be substituted;

(*iv*) after clause (*24*), the following clause shall be inserted, namely:—

'(*24A*) "related party", in relation to an individual, means—

(*a*) a person who is a relative of the individual or a relative of the spouse of the individual;

(*b*) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(*c*) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(*d*) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(*e*) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(*f*) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(*g*) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(*h*) a person on whose advice, directions or instructions, the individual is accustomed to act;

(*i*) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(*a*) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(*i*) members of a Hindu Undivided Family,

(*ii*) husband,

(*iii*) wife,

(*iv*) father,

(*v*) mother,

(*vi*) son,

(*vii*) daughter,

(*viii*) son's daughter and son,

(*ix*) daughter's daughter and son,

(*x*) grandson's daughter and son,

(*xi*) granddaughter's daughter and son,

(*xii*) brother,

(*xiii*) sister,

(*xiv*) brother's son and daughter,

(*xv*) sister's son and daughter,

(*xvi*) father's father and mother,

(*xvii*) mother's father and mother,

(*xviii*) father's brother and sister,

(*xix*) mother's brother and sister; and

(*b*) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'.

Amendment of section 7.

4. In section 7 of the principal Act, in sub-section (*1*), for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.

Amendment of section 8.

5. In section 8 of the principal Act,—

(*a*) in sub-section (*2*),—

(*i*) in clause (*a*), for the words "if any, and", the words "if any, or" shall be substituted;

(*ii*) in clause (*b*), for the word "repayment", the word "payment" shall be substituted;

(*b*) in the *Explanation*, for the word "repayment", the word "payment" shall be substituted.

Amendment of section 9.

6. In section 9 of the principal Act,—

(*a*) in sub-section (*3*),—

(*i*) in clause (*c*), for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;

(*ii*) for clause (*d*), the following clauses shall be substituted, namely:—

"(*d*) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(*e*) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";

(*b*) in sub-section (*5*),—

(*A*) in clause (*i*), in sub-clause (*b*), for the word "repayment", the word "payment" shall be substituted;

(*B*) in clause (*ii*), in sub-clause (*b*), for the word "repayment", the word "payment" shall be substituted.

Amendment of section 10.

7. In section 10 of the principal Act, —

(*a*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The corporate applicant shall, along with the application, furnish—

(*a*) the information relating to its books of account and such other documents for such period as may be specified;

(*b*) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(*c*) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";

(*b*) in sub-section (*4*),—

(*i*) in clause (*a*), after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;

(*ii*) in clause (*b*), after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.

Amendment of section 12.

8. In section 12 of the principal Act, in sub-section (*2*), for the word "seventy-five", the word "sixty-six" shall be substituted.

Insertion of new section 12A.

9. After section 12 of the principal Act, the following section shall be inserted, namely:—

Withdrawal of application admitted under section 7, 9 or 10.

"12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed.".

Amendment of section 14.

10. In section 14 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The provisions of sub-section (*1*) shall not apply to—

(*a*) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(*b*) a surety in a contract of guarantee to a corporate debtor.".

Amendment of section 15.

11. In section 15 of the principal Act, in sub-section (*1*), in clause (*c*), for the word "claims", the words "claims, as may be specified" shall be substituted.

Amendment of section 16.

12. In section 16 of the principal Act, in sub-section (*5*), for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.

Amendment of section 17.

13. In section 17 of the principal Act, in sub-section (*2*),—

(*i*) in clause (*d*), for the words "may be specified.", the words "may be specified; and" shall be substituted;

(*ii*) after clause (*d*), the following clause shall be inserted, namely:—

"(*e*) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.".

Amendment of section 18.

14. In section 18 of the principal Act, in the *Explanation*, for the word "sub-section", the word "section" shall be substituted.

Amendment of section 21.

15. In section 21 of the principal Act,—

(*i*) in sub-section (*2*),—

(*a*) in the proviso, for the words "related party to whom a corporate debtor owes a financial debt", the words "financial creditor or the authorised representative of the financial creditor referred to in sub-section (*6*) or sub-section (*6A*) or sub-section (*5*) of section 24, if it is a related party of the corporate debtor," shall be substituted;

(*b*) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";

(*ii*) in sub-section (*3*), for the word "Where", the words, brackets and figures and letter "Subject to sub-sections (*6*) and (*6A*), where" shall be substituted;

(*iii*) in sub-section (*6*), in the opening portion, the words "or issued as securities" shall be omitted;

(*iv*) after sub-section (*6*), the following sub-sections shall be inserted, namely:—

"(*6A*) Where a financial debt—

(*a*) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors,

such trustee or agent shall act on behalf of such financial creditors;

(*b*) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (*a*) or sub-section (*6*), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(*c*) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (*a*) or clause (*b*) or clause (*c*) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(*6B*) The remuneration payable to the authorised representative—

(*i*) under clauses (*a*) and (*c*) of sub-section (*6A*), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(*ii*) under clause (*b*) of sub-section (*6A*) shall be as specified which shall be jointly borne by the financial creditors.";

(*v*) for sub-sections (*7*) and (*8*), the following sub-sections shall be substituted, namely:—

"(*7*) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (*6*) and (*6A*).

(*8*) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.".

Amendment of section 22.

16. In section 22 of the principal Act,—

(*a*) in sub-section (*2*), for the word, "seventy-five", the word "sixty-six" shall be substituted;

(*b*) in sub-section (*3*),—

(*i*) in clause (*a*), after the words "resolution professional", the words "subject to a written consent from the interim resolution professional in the specified form" shall be inserted;

(*ii*) in clause (*b*), after the words "appointment of the proposed resolution professional", the words "along with a written consent from the proposed resolution professional in the specified form" shall be inserted.

Amendment of section 23.

17. In section 23 of the principal Act, in sub-section (*1*), the following proviso shall be inserted, namely:—

"Provided that the resolution professional shall, if the resolution plan under sub-section (*6*) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31.".

Amendment of section 24.

18. In section 24 of the principal Act, —

(*i*) in sub-section (*3*), in clause (*a*), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (*6*) and (*6A*) of section 21 and sub-section (*5*)" shall be substituted;

(*ii*) in sub-section (*5*), for the words "Any creditor", the words, brackets, figures and letters "Subject to sub-sections (*6*), (*6A*) and (*6B*) of section 21, any creditor" shall be substituted.

Insertion of new section 25A.

19. After section 25 of the principal Act, the following section shall be inserted, namely:—

Rights and duties of authorised representative of financial creditors.

'25A.(*1*) The authorised representative under sub-section (*6*) or sub-section (*6A*) of section 21 or sub-section (*5*) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(*2*) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(*3*) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(*4*) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.—For the purposes of this section, the "electronic means" shall be such as may be specified.'.

Amendment of section 27

20. In section 27 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.".

Amendment of section 28.

21. In section 28 of the principal Act, in sub-section (*3*), for the word, "seventy-five", the word "sixty-six" shall be substituted.

Amendment of section 29A.

22. In section 29A of the principal Act,—

(*i*) in clause (*c*),—

(*A*) for the words "has an account,", the words "at the time of submission of the resolution plan has an account," shall be substituted;

(*B*) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;

(*C*) after the proviso, the following shall be inserted, namely:—

'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate

debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;";

(*ii*) for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) has been convicted for any offence punishable with imprisonment—

(*i*) for two years or more under any Act specified under the Twelfth Schedule; or

(*ii*) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (*iii*) of *Explanation* I;";

(*iii*) in clause (*e*), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply in relation to a connected person referred to in clause (*iii*) of *Explanation* I;";

(*iv*) in clause (*g*), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;";

(*v*) in clause (*h*),—

(*A*) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;

(*B*) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

(*vi*) in clause (*i*), for the words "has been", the word "is" shall be substituted;

(*vii*) the *Explanation* occurring after clause (*j*) shall be numbered as *Explanation* I, and in *Explanation* I as so numbered, for the proviso, the following provisos shall be substituted, namely:—

'Provided that nothing in clause (*iii*) of *Explanation* I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;';

(*viii*) after *Explanation* I as so numbered, the following *Explanation* shall be inserted, namely:—

'*Explanation* II.—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(*a*) a scheduled bank;

(*b*) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(*c*) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;

42 of 1999.

(*d*) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

54 of 2002.

(*e*) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(*f*) such categories of persons as may be notified by the Central Government.".

Amendment of section 30.

23. In section 30 of the principal Act,—

(*i*) in sub-section (*1*), after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;

(*ii*) in sub-section (*2*),—

(*A*) in clauses (*a*) and (*b*), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(*B*) after clause (*f*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.— For the purposes of clause (*e*), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.";

18 of 2013.

(*iii*) in sub-section (*4*),—

(*a*) for the word "seventy-five", the word "sixty-six" shall be substituted;

(*b*) after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.".

Amendment of section 31.

24. In section 31 of the principal Act,—

(*a*) in sub-section (*1*), the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section,

satisfy that the resolution plan has provisions for its effective implementation.";

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (*1*), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (*1*) or within such period as provided for in such law, whichever is later.".

Amendment of section 33.

25. In section 33 of the principal Act, in sub-section (*2*), after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

Amendment of section 34.

26. In section 34 of the principal Act, —

(*a*) in sub-section (*1*), for the words and letter "Chapter II shall", the words and letter "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;

(*b*) in sub-section (*4*),—

(*i*) in clause (*b*), for the words "in writing.", the words "in writing; or" shall be substituted;

(*ii*) after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) the resolution professional fails to submit written consent under sub-section (*1*).";

(*c*) in sub-section (*5*), for the word, brackets and letter "clause (*a*)", the words, brackets and letters "clauses (*a*) and (*c*)" shall be substituted;

(*d*) in sub-section (*6*), after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.

Amendment of section 42

27. In section 42 of the principal Act, after the words "of the liquidator", the words "accepting or" shall be inserted.

Amendment of section 45.

28. In section 45 of the principal Act, in sub-section (1), the words and figures "of section 43" shall be omitted.

Amendment of section 60.

29. In section 60 of the principal Act, —

(*a*) in sub-section (*2*), for the words "bankruptcy of a personal guarantor of such corporate debtor", the words "liquidation or bankruptcy

of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor" shall be substituted;

(*b*) in sub-section (*3*), for the words "bankruptcy proceeding of a personal guarantor of the corporate debtor", the words "liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor" shall be substituted.

Amendment of section 69.

30. In section 69 of the principal Act, for the words "On or after the insolvency commencement date, if", the word "If" shall be substituted.

Amendment of section 76.

31. In section 76 of the principal Act,—

(*a*) in the marginal heading, for the word "repayment", the word "payment" shall be substituted;

(*b*) in clause (*a*), for the word "repayment", the word "payment" shall be substituted.

Amendment of section 196.

32. In section 196 of the principal Act, in sub-section (*1*),—

(*i*) after clause (*a*), the following clause shall be inserted,namely:—

"(*aa*) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;";

(*ii*) in clause (*c*), for the words "for the registration", the words "for carrying out the purposes of this Code, including fee for registration and renewal" shall be substituted.

Amendment of section 231.

33. In section 231 of the principal Act, for the words "Adjudicating Authority" at both the places where they occur, the words "Adjudicating Authority or the Board" shall be substituted.

Insertion of new section 238A.

34. After section 238 of the principal Act, the following section shall be inserted, namely:—

Limitation.

"238A. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.". 36 of 1963.

Amendment of section 239.

35. In section 239 of the principal Act, in sub-section (*2*),—

(*i*) after clause (*e*), the following clause shall be inserted, namely:—

"(*ea*) other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information under clause (*e*) of sub-section (*3*) of section 9;";

(*ii*) after clause (*f*), the following clause shall be inserted, namely:—

"(*fa*) the manner of withdrawal of application under section 12A;".

Amendment of section 240.

36. In section 240 of the principal Act, in sub-section (*2*),—

(*i*) clause (*g*) shall be omitted;

(*ii*) after clause (*j*), the following clause shall be inserted, namely:—

"(*ja*) the last date for submission of claims under clause (*c*) of sub-section (*1*) of section 15;";

(*iii*) after clause (*n*), the following clauses shall be inserted, namely:—

"(*na*) the number of creditors within a class of creditors under clause (b) of sub-section (*6A*) of section 21;

(*nb*) the remuneration payable to authorised representative under clause (*ii*) of the proviso to sub-section (*6B*) of section 21;

(*nc*) the manner of voting and determining the voting share in respect of financial debts under sub-section (*7*) of section 21;".

Insertion of new section 240A.

37. After section 240 of the principal Act, the following section shall be inserted, namely:—

Application of this Code to micro, small and medium enterprises.

'240A.(*1*) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (*c*) and (*h*) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.

(*2*) Subject to sub-section (*1*), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

(*a*) not apply to micro, small and medium enterprises; or

(*b*) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.

(*3*) A draft of every notification proposed to be issued under sub-section (*2*), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(*4*) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

(*5*) The period of thirty days referred to in sub-section (*3*) shall not include any period during which the House referred to in sub-section (*4*) is prorogued or adjourned for more than four consecutive days.

(*6*) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

Explanation.— For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (*1*) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.'.

27 of 2006.

Insertion of new Schedule.

38. After the Eleventh Schedule to the principal Act, the following Schedule shall be inserted, namely:—

"THE TWELFTH SCHEDULE
(*See* clause (*d*) of section 29A)

ACTS FOR THE PURPOSES OF CLAUSE (d) OF SECTION 29A

(1) The Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);

(2) The Reserve Bank of India Act, 1934 (2 of 1934);

(3) The Central Excise Act, 1944 (1 of 1944);

(4) The Prevention of Food Adulteration Act, 1954 (37 of 1954);

(5) The Essential Commodities Act, 1955 (10 of 1955);

(6) The Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(7) The Income-tax Act, 1961 (43 of 1961);

(8) The Customs Act, 1962 (52 of 1962);

(9) The Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(10) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974);

(11) The Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(12) The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);

(13) The Environment (Protection) Act, 1986 (29 of 1986);

(14) The Prohibition of Benami Property Transactions Act, 1988 (45 of 1988);

(15) The Prevention of Corruption Act, 1988 (49 of 1988);

(16) The Securities and Exchange Board of India Act, 1992 (15 of 1992);

(17) The Foreign Exchange Management Act, 1999 (42 of 1999);

(18) The Competition Act, 2002 (12 of 2003);

(19) The Prevention of Money-laundering Act, 2002 (15 of 2003);

(20) The Limited Liability Partnership Act, 2008 (6 of 2009);

(21) The Foreign Contribution (Regulation) Act, 2010 (42 of 2010);

(22) The Companies Act, 2013 (18 of 2013) or any previous company law;

(23) The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);

(24) The Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(25) The Central Goods and Services Tax Act, 2017 (12 of 2017) and respective State Acts imposing State goods and services tax;

(26) such other Acts as may be notified by the Central Government.".

Amendment of section 434 of Act 18 of 2013.

39. In section 434 of the Companies Act, 2013, [as substituted by paragraph 34 of the Eleventh Schedule to the Insolvency and Bankruptcy Code, 2016], in sub-section (*1*), in clause (*c*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.".

31 of 2016.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय मुद्रणालय, रायपुर से मुद्रित तथा प्रकाशित - 2018.